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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,303	10/31/2003	Yu-Hong Chang		9881

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EXAMINER
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DRYDEN, MATTHEW DUTTON

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/697,303	<b>Applicant(s)</b> CHANG, YU-HONG	
	<b>Examiner</b> Matthew D. Dryden	<b>Art Unit</b> 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Priority***

No priority has been claimed for this patent application.

### ***Claim Objections***

Claim 1 is objected to because of the following informalities: the first three lines of the claim are confusing, "an" the second word on the second line should be changed to -a-, it is suggested that the applicant remove "to make it a two-in-one design of structures" this statement is not necessary in the claim and is not grammatically correct.

Claim 3 is objected to because of the following informalities: the opening of claim 3 is confusing, with the "wherein the lancer...comprising", and after each of the individual breakdowns of letters a., b., c., d., e., f., and g. there is a period, claims should only be one sentence and a. currently consists of two sentences an appropriate set up of such a claim can be seen below.

The biosensor monitor according to claim 1, further comprising:

a. an inner tube, (no period)

b. an adaptor, (no period)

...

h. a needle protective cover which houses the said needle cover.

Also claim 3 is objected to because in part e. of claim 3, "receive" should be changed to -receiver-.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites the limitation of "the protrusion on the inner wall of the outer tube" and "the connecting rod" in lines 15-17 on page 9. There is insufficient antecedent basis for this limitation in the claim. There is no mention of an outer tube, a connecting rod, or a protrusion in claim 1, which claim 3 refers back to, so there is no antecedent basis, which is necessary for these limitations. Also in part d. of claim 3, the limitation says there are teeth on the inner wall of the outer tube and before there was no mention of teeth on the inner wall of the outer tube, but on the inner tube.

Claim 3 is rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a

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manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cunningham et al (6306104) in view of Boecker et al (6966880). Cunningham et al discloses the claimed invention except for the device comprising a communication port for transmitting the information via a mobile phone to an Internet server. Cunningham discloses: an upper protective housing (around element 302b in Figure 7), a lower protective housing (Figure 7, around or below element 302), a circuit board under the cover for producing results of the biosensor see Columns 16-20, lines 40-13), a lancer (around element 316 in Figure 7) and display (element 320 in Figure 7). Boecker et al

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teaches it is known to provide a blood-sampling device that includes a communication port for transmission of data over a wireless or wired connection to allow for information of the patient to be sent to a primary location for monitoring and analysis (see columns 6-8, lines 47-28). A mobile phone can be viewed as a wireless connection device or wireless network. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Cunningham et al with a communication port, as taught by Boecker et al, to allow for remote collection of information for both monitoring and analysis purposes.

Regarding claim 2, Cunningham et al teaches a device that comprises a LCD display for showing the test results on a protective upper housing that also receives a test strip (see Figure 7, test strip around element 314, display screen around 320).

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cunningham et al in view of Boecker et al as applied to claim 1 above, and further in view of LeVaughn et al (6197040). Cunningham et al as modified discloses the claimed invention except for the device having an inner tube with teeth to guide the rotation of a connecting rod that includes a triangular protrusion. Cunningham et al does disclose: an inner tube (around element 66 in Figure 21, inner slot can be seen in between elements 88 and 70 in Figure 21) and outer tube (around element 70 in Figure 21) that has a protrusion that is capable of fitting in the opening slot of the inner tube (around element 70 in Figure 21), the fixed spring (element 68 in Figure 21), the adaptor to fix the spring on one end (around element 64 in Figure 21), connecting rod (element 67b in Figure 20 and 21), needle receiver (top portion of element 67 in Figure 20), a needle which sits in

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the receiver (element 67a in Figure 20), a needle cover capable of adjusting needle depth (can be seen around element 1207 in Figure 25 ), needle protective cover (can be seen around element 302a in Figure 7). Boecker et al teaches to provide an inner tube (around element 28a in Figure 7) and a connecting rod that engages the needle with teeth (around element 50 in Figure 7A) and a triangular protrusion (at the bottom of element 20 in Figure 7A), for engaging the lancer and provides an easy and secure way to move the lancer in and out of the device, by way of the teeth (see Column 4, lines 11-35). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Cunningham et al, with inner tube with teeth to guide the rotation of a connecting rod that includes a triangular protrusion to engage the lancer and provide an easy and secure way to move the lancer in and out of the device.

### ***Prior Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 5,035,704 Lambert et al disclose a blood sampling mechanism

U.S. Pat. No. 5,108,889 Smith discloses an assay for determining analyte using mercury release followed by detection via interaction with aluminum

U.S. Pat. No. 5,279,294 Anderson et al disclose a medical diagnostic system

U.S. Pat. No. 5,593,390 Castellano et al disclose a medication delivery device with a microprocessor and characteristic monitor

U.S. Pat. No. 5,951,492 Douglas et al disclose methods and apparatus for sampling and analyzing body fluid.

### ***Conclusion***

An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

A listing of registered patent attorneys and agents is available on the USPTO Internet web site <http://www.uspto.gov> in the Site Index under "Attorney and Agent Roster." Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Dryden whose telephone number is (571) 272-6266. The examiner can normally be reached on Monday-Friday 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone



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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

## MDD

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